

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of decision: 30th March, 2016

+

W.P.(C) No.1338/2012

**TWENTY FIRST CENTURY MEDIA PRIVATE
LIMITED**

..... Petitioner

Through: Mr. Saurabh Kirpal, Ms. Meghna
Mishra, Mr. Rohan Sharma and Mr.
Dheeraj P. Deo, Advs.

versus

NEW INDIA ASSURANCE COMPANY LTD (NIA)..... Respondent

Through: Mr. Pankaj Seth, Adv.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition impugns (i) Endorsement Schedule dated 17th October, 2010 issued by the respondent New India Assurance Company Limited qua the insurance policy taken by the petitioner; (ii) letters dated 27th October, 2010 and 4th October, 2011 of the respondent repudiating the claim of the petitioner under the insurance policy obtained from the respondent and seeks mandamus directing the respondent to settle the claim of the petitioner by remitting to the petitioner a sum of Rs.1.60 crore along with interest at 18% per annum from the date on which the payment became due until the date of settlement of the claim.

2. Notice of the petition was issued and pleadings completed though interim relief claimed of directing the respondent to deposit the amount of Rs.1.60 crore in this Court not granted. The counsels were heard on 8th September, 2015 and judgment reserved.

3. It is the case of the petitioner (i) that one M/s. Prerana International was the successful bidder for the instadia advertising rights for the cricket matches to be held in Kochi and Goa on 17th October, 2010 and 24th October, 2010 respectively; (ii) on 24th September, 2010 the petitioner entered into an instadia advertising agreement with the said M/s. Prerana International and paid Rs.1.10 crore as consideration therefor; (iii) the petitioner in turn entered into agreements with various parties granting advertising rights in the stadia (iv) the petitioner thereafter entered into an insurance contract agreement, policy bearing no.311503/46/10/72/00000108 with the respondent on 15th October, 2010 to cover the loss of revenue for matches aforesaid; (v) the insurance policy covered the loss of revenue for a total sum of Rs.4.20 crores out of which the coverage for the Goa match scheduled on 24th October, 2010 was Rs.1.60 crores; (vi) that the policy covered the abandonment of the match arising from the perils of (a) fire and allied perils; (b) storms, cyclone, typhoon, tempest, hurricane, tornado, flood, inundation and rain; and, (c) riot, strike and

civil commotion; (vii) that the petitioner paid the entire premium of Rs.3,24,284/- for the aforesaid policy; (viii) that as per the insurance policy, cancellation of the match meant not a single ball being bowled in the match; (ix) that both the matches i.e. at Kochi on 17th October, 2010 and at Goa on 24th October, 2010 were called off due to heavy rain; (x) the petitioner informed the respondent of the same and called upon the respondent to pay the money due under the policy; (xi) that the respondent vide letter dated 17th October, 2010 sent an endorsement to the petitioner arbitrarily and unilaterally deleting the peril of storm, cyclone, typhoon, tempest, hurricane, tornado, flood, inundation, rains, bad pitch conditions and wet ground conditions from the insurance policy qua the match at Goa on 24th October, 2010; (xii) the petitioner immediately vide its letter dated 20th October, 2010 protested; (xiii) the petitioner vide its letter dated 25th October, 2010 requested the respondent to settle the claim under the policy; (xiv) the respondent vide its letter dated 27th October, 2010 denied liability citing the endorsement issued on 17th October, 2010; (xv) that the subsequent deletion by the respondent of the peril *inter alia* of rain is *void ab initio* and contrary to principles of *consensus ad idem* and unreasonable, unfair and arbitrary; (xvi) that the respondent ultimately vide letter dated 4th October, 2011 declared that the claim of the

petitioner had been repudiated by the Competent Authority of the respondent as rain peril had been deleted from the scope of the policy vide Endorsement dated 17th October, 2010; (xvii) that the petitioner has suffered loss which was insured; (xviii) that the actions of the respondent are violative of Article 14 of the Constitution of India; and, (xix) that the action of the respondent by deleting the rain peril from the policy after becoming liable for the match at Kochi is *mala fide*.

4. It is the stand of the respondent in its counter affidavit (i) that the dispute raised in the petition is in relation to validity of contract between the parties and the writ petition is not maintainable; (ii) that no part of the premium earlier collected had become refundable after deleting the rain peril from the policy; (iii) that the deletion was made much before the scheduled date of the match at Goa on 24th October, 2010; (iv) that the petitioner inspite of receipt on 18th October, 2010 of the endorsement regarding deletion and till prior to the commencement of the match at Goa never objected thereto and raised objection thereto only after the match at Goa was abandoned and when the respondent denied its liability under the policy; (v) that upon the petitioner approaching the concerned branch office of the respondent for obtaining Standard Fire and Special Perils Policy covering the Kochi and Goa matches to

be played on 17th October, 2010 and 24th October, 2010 the said branch office forwarded such proposal to the Competent Authority at Regional Office of the respondent and on examination of the proposal of the petitioner the Competent Authority at the Regional Office of the respondent informed the concerned branch office that cover is to be given as per Standard Fire and Special Perils Policy but the said concerned branch office misconstrued the cover and they also allowed rain cover along with the perils as per Standard Fire and Special Perils Policy; (vi) when an intimation of claim for cancellation of Kochi match was received by the respondent it was noticed that the branch had issued the policy with the rain coverage and immediately thereafter the Competent Authority at Regional Office of the respondent advised the concerned branch to delete the rain cover from the policy in relation to the match to be played at Goa on 24th October, 2010 and the concerned branch thereafter immediately issued the aforesaid Endorsement dated 17th October, 2010 deleting the coverage in respect of rain; (vii) upon claim being received qua Goa match also a surveyor was appointed who assessed the net loss as Rs.42,23,187/-; (viii) however since the rain cover was not covered under the policy the claim of the petitioner was not payable; (ix) that the petitioner having not protested against the Endorsement dated 17th October, 2010 deleting the rain coverage till the

match at Goa was abandoned due to rain, cannot subsequently be allowed to protest; and, (x) withdrawal of the rain peril coverage from the policy prior to commencement of risk is neither unfair nor arbitrary.

5. Though the petitioner has filed a rejoinder but since no reference thereto was made during the hearing, need to refer thereto is not felt.

6. I had at the outset only drawn attention of the counsel for the petitioner to the dicta of the Supreme Court in ***Godavari Sugar Mills Ltd. Vs. State of Maharashtra*** (2011) 2 SCC 439 and enquired from him as to how the writ petition is maintainable. In fact option was given to withdraw the petition and to file a suit or if there is an arbitration clause in the policy invoke arbitration for claiming the contractual dues. However the counsel for the petitioner relying on ***ABL International Ltd. Vs. Export Credit Guarantee Corporation of India Ltd.*** (2004) 3 SCC 553 contended that the writ remedy is available and there are no disputed questions of fact and thus the relief can be granted to the petitioner in writ jurisdiction also.

7. I am however unable to agree. Supreme Court, after ***ABL International Ltd.*** supra and ***Godavari Sugar Mills Ltd.*** supra has again dealt with the question of maintainability of writ petitions in contractual matters in ***Joshi***

Technologies International Inc. Vs. Union of India (2015) 7 SCC 728 and in order dated 18th March, 2015 in Civil Appeal No.3053/2015 arising out of SLP (C) No.15689/20011 titled ***National Highways Authority of India Vs. MEIL-EDB LLC (JV)*** wherein the view taken by the Division Bench of this Court in judgment dated 10th March, 2011 in W.P.(C) No.8418/2010 titled ***M/s. Madhucon Projects Ltd. Vs. National Highways Authority of India*** was not agreed with. I have in ***CCPL Developers Pvt. Ltd. Vs. Gail (India) Ltd.*** MANU/DE/4361/2015, extensively quoting from the said judgment/order of the Supreme Court, dealt with the question of maintainability of writ petitions in contractual matters and concluded the Supreme Court to have held that:-

- (a) the operative part of ***ABL International Ltd.*** supra has to be understood in the context of discussion that preceded it and as per which though there is no absolute bar to the maintainability of writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised but discretion lies with the High Court which under certain circumstances can refuse to exercise;

- (b) the High Court will normally not exercise such discretion unless the action has some public law character attached to it;
- (c) whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and would relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration;
- (d) if there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination, again the High Court in its discretion would not entertain a writ petition;
- (e) money claims *per se* particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances;
- (f) ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed and otherwise may sue for damages;

- (g) if the contract between private party and the State/instrumentality and/or agency of State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitutional of India and invoking its extraordinary jurisdiction;
- (h) only if the nature of the activity or controversy involves public law element can the matter be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable;
- (i) in pure contractual matters extraordinary remedy of writ under Article 226 or Article 32 of the Constitution of India cannot be invoked; and,
- (j) Writ Court should abjure from going into minute calculation and controversy should be left to the Civil court to decide.

8. I have taken the same view as in ***CCPL Developers Pvt. Ltd.*** supra, also in ***Playwell Impex (P) Ltd. Vs. United India Insurance Co. Ltd.*** MANU/DE/3098/2015 which was also a case of enforcement of claim under a insurance policy in writ jurisdiction and LPA No.892/2015 preferred thereagainst is found to have been withdrawn on 17th December, 2015. The same view was also taken by me in ***Hejian Solidkey Petroleum Machinery Co. Ltd. Vs. Indian Oil Corporation Ltd.*** MANU/DE/2818/2015 and speaking for the Division Bench of this Court in ***Chakradar Auto Udyog Pvt. Ltd. Vs. Engineering Export Promotion Council*** MANU/DE/4248/2012. To the same effect is ***Govt. of NCT of Delhi Vs. New Variety Tent House*** 189 (2012) DLT 65 (DB) (SLP(C) No.23577 of 2012 preferred thereagainst is found to have been dismissed on 3rd August, 2012).

9. The petitioner herein has not placed the insurance policy on record. It is thus not known whether the same provides for arbitration. There is also a material factual dispute whether the petitioner protested against the Endorsement dated 17th October, 2010 prior to the cancellation of the match scheduled on 24th October, 2010; while the petitioner claims to have done so the respondent strongly refutes. We also do not know what were the other terms and conditions of the policy and whether the same permitted deletion of

a peril prior to occurrence of loss attributable thereto. The effect if any of the instructions alleged to have been issued by the Competent Authority of the respondent at the Regional Office and in contravention whereof the policy is stated to have been issued can also not be considered and adjudicated without examination and cross examination of witnesses and which is not the domain of writ jurisdiction. Not only so, the assessment of monetary claim if any to which the petitioner may be entitled to also requires trial and neither does the claim have any public law character nor is any exceptional case for entertaining contractual claim in writ jurisdiction made out. Supreme Court, in ***LIC of India Vs. Asha Goel*** (2001) 2 SCC 160 also held that where plea of fraud is pleaded by Insurer, writ should not be entertained; here the respondent has pleaded mistake.

10. I may also notice that the insurance of the kind taken by the petitioner is now provided by private players as well and merely because the respondent is a government company would not permit claims against it to be made in writ petitions instead of under the ordinary Civil Law.

11. For all the aforesaid reasons and applying the dicta aforesaid of the Supreme Court I hold the petition to be not maintainable and dismiss the same. However since notice of the writ petition was issued and the same was entertained and remained pending in this Court it is clarified that the time between the date of institution of the petition in this Court i.e. 3rd March, 2012 and till today shall be excluded in computing the limitation for the proceedings if any taken by the petitioner for recovery of claims from the respondent.

No costs.

RAJIV SAHAI ENDLAW, J

MARCH 30, 2016

‘pp’..